

**NEVADA  
HEALTH INFORMATION TECHNOLOGY  
BLUE RIBBON TASK FORCE**

**DR. RAYMOND RAWSON, CHAIRMAN**

**REPORT TO  
GOVERNOR JIM GIBBONS**

**APRIL 30, 2010**

This report has been prepared, pursuant to the Executive Order issued by Governor Jim Gibbons, dated September 11, 2009, establishing the Nevada Health Information Technology (HIT) Blue Ribbon Task Force. The order stipulates “that the Task Force shall submit preliminary recommendations to the Governor’s Office no later than April 30, 2010 regarding revisions to state laws and regulations that impede the exchange of health care information or to further protect sensitive personal health information, and to present potential health information technology projects and related funding for inclusion in the Governor’s recommended budget for Fiscal Years 2011-2012 and 2012-2013.”

### **ARRA HITECH Act of 2009**

On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law. This statute includes the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) that sets forth a plan for advancing the meaningful use of health information technology (HIT) to improve quality of care through the adoption of certified electronic health records (EHRs) and the facilitation of health information exchange (HIE).

As mandated by the HITECH Act, the Office of the National Coordinator for Health Information Technology (ONC) is updating the Federal Health IT Strategic Plan published in June 2008, for the 2008-2012 timeframe. The revised plan will encompass 2011-2015, and, as per the statute, will include specific objectives, milestones, and metrics regarding the electronic exchange and use of health information; the utilization of an electronic health record for each person in the United States by 2014; the incorporation of privacy and security protections for electronic exchange of an individual’s individually identifiable health information; and security methods to ensure appropriate authorization and electronic authentication of health information.

HITECH required that federal standards be developed to support EHR adoption and meaningful use requirements. CMS and ONC did not issue proposed regulations on the definition of meaningful use and the initial set of standards, implementation specifications, and certification criteria for EHR technology until December 30, 2009. Public comment was taken until March 15, 2010, and final regulations are now pending.

### **Status of the Nevada HIT Blue Ribbon Task Force**

Since its inception, the Task Force has met five times, and monthly meetings are scheduled during the remainder of the calendar year. Bylaws were adopted, and all meetings are held in accordance with Nevada Open Meeting Law. Task Force meetings are always held at one location in the north and one location in the south, connected via videoconferencing. As often as possible, the meetings are also broadcast live over the Internet, for maximum transparency. The Department of Health and Human Services (DHHS) maintains the HIT Web site (<http://dhhs.nv.gov/HIT.htm>), which includes information regarding federal HIT/HIE initiatives, Nevada HIE efforts, and the HIT Task Force meetings and activities. It is linked to the Nevada ARRA Web site, and the Nevada ARRA Director receives all meeting agendas and materials.

On October 16, 2009, DHHS submitted an application to ONC for a funding award under the ARRA State HIE Cooperative Agreement Program, and award announcements were expected by mid-January 2010. While waiting for the award and more clearly defined requirements, the Task Force reviewed HIE governance and infrastructure options, lessons learned by other states, and privacy and security concerns. It also met with the Chairman of the Nevada Broadband Task Force to better coordinate efforts, as broadband connectivity is an enabling technology for EHR adoption, meaningful use and HIE.

### **HITECH State HIE Funding**

On February 12, 2010, DHHS received notice that it was awarded a four-year ARRA HITECH State HIE Cooperative Agreement in the amount of \$6,133,426. The award is to be used for the facilitating the establishment of the core statewide infrastructure and capacity which permits intra-state, interstate and nationwide HIE, and also supports the adoption of certified EHRs and the accompanying meaningful use requirements. HIE is required for certain providers and hospitals to be eligible for the EHR meaningful use incentives being offered by the Centers for Medicare and Medicaid Services (CMS).

The first phase of the HIE Cooperative Agreement is the development and submission of a state HIT Strategic Plan and HIE Operational Plan. HITECH includes a 10% cap on the funding that may be used for planning, and Nevada's award allocates the maximum of \$613,343 for these activities. Both plans are due to the Office of the National Coordinator for Health Information Technology (ONC) by August 31, 2010. This planning process requires an environmental scan for determining HIE readiness and EHR adoption across all health care providers in the state, as well as an inventory of the legal framework for facilitating HIE.

Nevada Medicaid must also develop similar plans and engage in comparable planning activities, for which it has been awarded \$1,784,247 in ARRA HITECH funding. The Division of Health Care Financing and Policy (DHCFP) is utilizing the funds to develop the required State's Medicaid HIT Plan (SMHP). The SMHP will include DHCFP's strategy for administering and overseeing the Medicaid provider incentive payment program for the adoption and meaningful use of certified EHR technology, along with how these DHCFP initiatives to support those objectives will integrate with the larger statewide HIT goals.

DHCFP, as part of the Medicaid Management Information System (MMIS) Takeover Procurement, is requesting the successful proposer to provide a scalable HIE solution that may also serve as the statewide HIE platform. Initially, DHCFP is looking to utilize this HIE solution for sharing claims and other relevant data with the EHR systems of Nevada Medicaid and Check Up providers who use certified EHR technology which meets national standards. Nevada's current HIT and HIE infrastructure and capacity are limited, and DHCFP's planned HIE solution is expected to assist eligible Medicaid providers in meeting the required meaningful use criteria necessary to qualify for and receive incentive payments for certified EHR adoption.

HITECH does require that Nevada Medicaid's SMHP be coordinated and integrated with that of the HIE Cooperative Agreement. ONC and CMS are allowing certain shared activities, and DHHS and Nevada Medicaid expect to pool resources whenever possible, to maximize the return on investment of the ARRA HITECH funding. The first such project is the environmental scan, which will ensure consistency of the resulting data for the planning process. Doing it jointly, using the same vendor, is a cost-effective and an efficient way for both agencies to support and integrate their HIT strategic plan requirements.

During the Task Force meeting on April 9, 2010, five HIE Planning Subcommittees were appointed and tasked to assist DHHS with the development of the HIT Strategic Plan and HIE Operational Plan. Each Subcommittee is chaired by a Task Force member, has at least 3 Task Force members, and includes non-Task Force members to broaden stakeholder participation. Nevada Medicaid, represented on both the Task Force and the Subcommittees, expects to utilize the same information and subject matter expertise in developing its comparable plans, to ensure coordination and consistency between the efforts.

### **Preliminary Recommendations**

The funding announcement of the State HIE Cooperative Agreement, which was delayed approximately one month, included new and unexpected requirements. Several of these requirements will have a direct impact on the state legislation necessary to enable health information exchange, facilitate EHR adoption, and protect personal health information (PHI). The same is true for the final regulations detailing meaningful use standards. These regulations are unknown at this time, with no estimation as to when they will be released, and will need to be cross-walked with state laws, so that gaps may be identified. Finally, addressing the issue of patient consent is critical to successful HIE and EHR meaningful use, and public workshops may be necessary to garner feedback from Nevada residents.

There are four related variables that may impact HIE legal and policy issues, and DHHS is monitoring them. The first variable is the previously mentioned revision of the Federal Health IT Strategic Plan. There could be additional requirements that would necessitate state legislation.

The second variable involves PHI. If the PHI is contained in EHRs, it is protected under HIPAA laws and regulations. However, if the same information is part of a Personal Health Record (PHR), HIPAA does not apply. PHRs, such as those offered by Google<sup>™</sup> health or Microsoft<sup>®</sup> HealthVault<sup>™</sup>, fall under the jurisdiction of the Federal Trade Commission (FTC). Because of recent privacy complaints and concerns raised by PHR users and the advent of HIE, the FTC is now reviewing the protection of PHI contained within PHRs. However, there is no indication of when the FTC will render a decision or what the potential outcome might be.

The third variable is the interim regulations for standards for health information security being developed by the U.S. Department of Commerce's National Institute of Standards and Technology (NIST), which are not expected until late summer of this year. CMS is working

with NIST to ensure related HIPAA compliance with the HITECH Act, and the use of mobile devices for remote data access is also being addressed.

The fourth variable is broadband connectivity for health care providers and hospitals statewide. Under the jurisdiction of the Federal Communications Commission (FCC), the National Broadband Plan is following the previously mentioned revision of the Federal Health IT Strategic Plan. The FCC is incorporating the use of wireless devices and applications in health care as part of the broadband plan, and working to remove the barriers created by HIT gaps that are slowing broadband acceleration.

The results of the legal inventory, required by the HIE Cooperative Agreement, will be necessary to determine what specific revisions to state laws and regulations will be required. However, at this time, the Task Force is able to recommend the following Bill Draft Requests (BDRs), and more definitive recommendations will be made to Governor Gibbons and his staff, no later than August 23, 2010.

1). Health Information Exchange

- a). To enable Health Information Exchange and remove potential barriers, the necessary provisions will need to be established. Please see the attached draft Executive Branch BDR.
- b). To enable the creation of health record data storage entities and provide the necessary business infrastructure to safeguard personal health information, the necessary provisions will need to be established for authorizing the creation and regulation of health record repositories and banks. Please see the attached draft Executive Branch BDR.
- c). To enable the adoption and meaningful use of certified EHR systems, the necessary provisions will need to be established to create the Electronic Health Records Act. The act would authorize the creation, maintenance and use of electronic health records. Please see the attached draft Executive Branch BDR.

2). Protection of Personal Health Information

To properly safeguard personal health information and its secure electronic exchange with authorized entities, the necessary provisions will need to be established for patient consent, clarification of individual rights with respect to the disclosure of information contained in EHRs, and clarification of the protection of privacy of EHRs. Please see the attached draft Executive Branch BDR.

3). Potential HIT Projects and Related Funding

HITECH Non-Federal Match Requirements

The HITECH Act calls for urgency in expanding the use and availability of nationwide HIE, and requires a match to federal monies awarded to states beginning in federal fiscal year 2011. For Nevada, no match is required during the planning phase. Matching requirements can be

provided through cash and/or in-kind contributions, and the HITECH Act requires an increasing level of match for each year of the HIE Cooperative Agreement program. The following table details the match requirements.

Federal Fiscal Year of Funding	Match Required
2010	None
2011 (begins October 1, 2010)	\$1 for each \$10 federal dollars
2012 (begins October 1, 2011)	\$1 for each \$7 federal dollars
2013 (begins October 1, 2012)	\$1 for each \$3 federal dollars

The four-year HIE Cooperative Agreement requires a total non-federal match of \$797,268. Nevada Medicaid has a required total 10% non-federal match, or \$117,125, during the SMHP planning process. Over the six-year SMHP implementation phase (SFY 2012-2017), the non-federal match by the state is anticipated to be less than \$155,000.

In August 2009, DHHS received an IFC Contingency Fund allocation of \$234,574 to establish the Office of HIT within the Director's Office. The funds have been used to hire the HIT Project Manager/State HIT Coordinator, complete and submit the HITECH State HIE Cooperative Agreement application, and support the HIT Blue Ribbon Task Force. As of the award date, the HIE Cooperative Agreement now fully funds the HIT Project Manager and the Task Force activities. DHHS has indicated to IFC that it would request any unspent dollars from the allocation be carried forward into SFY 2011, to be used as part of the required non-federal match.

The Task Force Subcommittee on HIE Financial Viability and Sustainability has been asked to assist DHHS with identifying potential external sources to meet the non-federal match requirements, including gifts, grants and donations. Support from the Executive Branch may be required to obtain the required funding. If IFC does not grant the carry forward and/or DHHS is unable to acquire all or part of the match funding, a request for State General Funds would need to be included in the budget for SFY 2012 and SFY 2013.

### HIE Governance Structure

The HIE governance structure is expected to be a public-private partnership, with independent funding mechanisms including gifts, grants and donations. DHHS anticipates using a significant portion of the HIE Cooperative Agreement funding for start-up operations of what HITECH refers to as a State Designated Entity (SDE). The Task Force Subcommittee on HIE Financial Viability and Sustainability has been asked to assist DHHS with identifying feasible financing mechanisms for the SDE and recommending which mechanism(s) would be the best path to sustainable statewide HIE. Support from the Executive Branch may be required to establish the SDE and/or to facilitate the funding mechanisms.

### Electronic Health Record Adoption

HITECH provides incentive payment programs, administered by CMS, to eligible providers for the adoption and meaningful use of certified EHR technology. There is no funding available to providers for purchasing an EHR system, either at the federal or state level. HITECH does include a provision for a federal loan program to be administered by the states, although ONC does not expect the funding appropriation anytime soon, if at all. Yet, adopting EHR technology and HIE capability are required for meeting the meaningful use requirements necessary to receive payments through the Medicaid and Medicare incentive programs. The most significant barrier to adoption is expected to be economic, particularly affected state and county agencies, rural hospitals, and small provider offices. Nationwide, the common thread running through feedback from providers is that EHR meaningful use incentives are insufficient to support EHR adoption and HIE, if the provider or hospital does not have the upfront capital to purchase an EHR system. Nevada's fragile economy is expected to be a factor that will continue to impact when providers will be able to adopt certified EHR systems, and could impede the state's ability to establish intrastate, inter-state and/or nationwide HIE. This would potentially jeopardize Nevada's HIE Cooperative Agreement funding, based on ONC terms and conditions. Support from the Executive Branch may be required to facilitate funding mechanisms to assist providers with EHR adoption.

### Workforce Readiness

There are two critical human resources components of successful EHR adoption and sustainable HIE infrastructure. The first is the readiness of health care providers to implement and use EHR systems and engage in HIE. Second, a labor pool of trained IT and HIT professionals is needed to service and maintain the necessary network systems, hardware and software to ensure EHR meaningful use and HIE.

HITECH authorizes the creation of education programs and curriculum to train HIT professionals to effectively implement and use secure, interoperable EHRs. However, the funds allocated are not expected to meet the demand for the necessary training and development to build a sufficient labor pool of qualified IT and HIT professionals throughout the U.S.

ONC has established the Health IT Workforce Development Program to focus key resources needed to rapidly expand the availability of skilled HIT professionals to support broad adoption and use of HIT. The states have been divided into regions, and grants have been awarded to each one. Nevada is the same region with Arizona, California, and Hawaii. California is the lead state for the regional grant, and the College of Southern Nevada has been awarded HITECH funds to develop a community college training program to help create a workforce that can facilitate the adoption and support of certified EHR systems.

However, there are workforce issues that must be considered by Nevada as it moves forward on the path to EHRs and HIE. It is estimated that only 17% of U.S. doctors and 10% of U.S.

hospitals have even basic EHRs. Barriers to adoption include: 1). the substantial cost; 2). the perceived lack of financial return on investment; 3) the technical and logistical challenges involved in installing, maintaining, and updating an EHR system; and 4). consumers' and physicians' concerns about the privacy and security of electronic health information. HITECH addresses these obstacles, with the expected result being an anticipated dramatic increase in demand for general IT and HIT professionals. (Blumenthal D. Stimulating the adoption of health information technology. N Engl J Med 2009;360:1477-1479)

Estimates based on data from the Bureau of Labor Statistics, Department of Education, and independent studies indicate a shortfall over the next five years of approximately 50,000 qualified HIT workers required to meet the needs of hospitals and physicians as they move to adopt certified EHRs. In collaboration with the National Science Foundation, Department of Education, and the Department of Labor, ONC designed the Health IT Workforce Development Program to assist in the training and assessment of qualified graduates, who will reduce the estimated shortfall by 85 percent. However, building a labor pool of sufficient size and with the necessary skill set will take time, making it difficult to achieve HITECH deadlines for EHR meaningful use. Also necessary is an interest in the part of high school students to pursue the required post-secondary education to qualify for these positions. Another factor is that the curriculum for such education programs must be developed, which also takes time to accomplish. Until such a stable and sustainable labor pool can be established, Nevada may find itself competing with other states for a finite group of IT and HIT professionals. It may also be a lost opportunity for expanding the economic base of the state's economy and new jobs creation. Support from the Executive Branch may be required to facilitate economic development incentives and funding mechanisms for higher education programs to meet IT and HIT workforce development for successful EHR adoption and a sustainable HIE infrastructure.

### Broadband Infrastructure

Broadband connectivity for health care providers and hospitals statewide will be critical to successful EHR adoption, meaningful use and HIE. All are necessary for eligible providers, both in urban and rural settings, to receive incentive payments. While ARRA did include some funding for expanding broadband capacity, it was not done to the same extent as HIE, nor is it part of HITECH. Of particular concern are Nevada's rural counties, where the rural hospitals and health care providers must meet the health care needs of Nevada residents in federally-designated medically underserved areas and where broadband service is underserved or not available.

During the first round of ARRA Broadband funding awards, none went to Nevada applicants. While the Broadband Task Force has worked with Nevada applicants for the second, and final, round of funding, there is no guarantee that any will be successful. This could be a barrier for the establishment of intrastate, inter-state and/or nationwide HIE, as well the ability of eligible providers to receive EHR incentive payments. Support from the Executive Branch may be required to facilitate funding mechanisms for expanding broadband capacity to support HIE and EHR meaningful use.